

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.11368 of 1999

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DATED: 30.07.2007

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Between:

Koppiseti Apparao.

.. Petitioner

And

The Agent to Government (District Collector)
East Godavari, Kakinada
and others.

.. Respondents

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.11368 of 1999

ORDER:

The petitioner approached this Court and filed the present writ petition seeking a writ of Certiorari to call for the records and quash the orders passed by the first respondent in CMA.No.5 of 1998 dated 22.04.1999 as it is contrary to the Full Bench judgment reported in AIR 1982 page (1).

It is the case of the petitioner that he is the native of Gontivanipalem village of Addateegala, which is situated in Agency area and he belongs to Kapu community, which is not a Schedule Tribe Community. The petitioner submits that he purchased an extent of Ac.3-27 cents in Sy.No.6/1 at Gontivanipalem on 15.05.1968 through an unregistered sale deed from one Chikkala Nagaiah, who also belongs to Kapu community, a non tribal. The said Chikkala Nagaiah purchased the land by way of two registered sale deeds in the year 1934 and in the year 1939 from Boddu Nagaiah and Ramanna, who also do not belong to Scheduled Tribe community, and the entire sale transactions took place between non tribals only.

The main grievance of the petitioner is that though he purchased the land in question from non tribals, the Special Deputy Tahsildar, Tribal Welfare, Addateegala, the third respondent herein, initiated L.T.R.P.No.99/96 on the file of Deputy Collector (Tribal Welfare), East Godavari District, Rampachodavaram-second respondent herein,

against the petitioner under Section 3 of A.P.Schedule Area Land Regulation 1 of 1970 on behalf of the Government for restoration of the petitioner's land to the Government, alleging that the transaction took place in the agency area and the petitioner is not entitled to possess the land in question. But, the said L.T.R.P.No.99/96 was dismissed by the second respondent on 27.05.1997, and aggrieved thereby, the third respondent preferred an appeal in CMA.No.5 of 1998 before the first respondent, whereby the order passed by the second respondent was set aside on 22.04.1999 on the ground that there is no registered document relating to the transaction in the year 1968 and the transaction is not valid and further the first respondent directed the fourth respondent to take possession of the land of the petitioner. Hence, this writ petition is filed.

Despite the fact that notices are served on the respondents, the respondents have not chosen to file the counter.

Having heard the learned counsel for the petitioner and perused the orders passed by the authorities below dated 27.05.1997 and 22.04.1999, this Court is of the view that the approach of the Agent to Government, East Godavari-the first respondent that there is no registered document containing the transaction that has taken place in the year 1968 and hence the petitioner is not entitled to possess the said land is not tenable. In fact, the petitioner had produced the registered sale deeds of the years relating to 1934 and 1939 and as per the recitals of the said sale deeds, it is clear that earlier the land in question was in possession of some non tribals and from them, the title passed on to the petitioner in the year 1968 may be by virtue of an unregistered sale deed.

The point here is as to whether at any point of time, any tribal held the land in question, and the possession of the said land by the petitioner is hit by Regulation 1 of 1959 as amended by Regulation 1 of 1970. Admittedly, this is not a civil Court to decide the issue of title. In view of the fact that the petitioner had produced the registered sale deeds of the years relating to 1934 and 1939 and as per the recitals of the said sale deeds, this Court is of the view that the petitioner is able to establish that the land in question was never owned or possessed by any tribal and it was in possession of non tribals, and hence, the said transaction of the year 1934 or 1939 or 1968 cannot be said to be hit by Regulation 1 of 1959 as amended by Regulation 1 of 1970. In fact, the Special Deputy Collector has given a categorical finding that the transaction took place in between two non-tribals and the land in question was never in possession and enjoyment of tribals.

Accordingly, this writ petition is allowed and the order passed by the Agent to Government, East Godavari, Kakinada, the first respondent herein, in CMA.No.5 of 1998, dated 22.04.1999, is hereby set aside.

(GOPALA KRISHNA TAMADA,J)

Dt.30.07.2007

v v